

ASSEMBLY BILL

No. 326

Introduced by Assembly Member Frazier

February 13, 2015

An act to amend Section 1742.1 of the Labor Code, relating to public works.

LEGISLATIVE COUNSEL'S DIGEST

AB 326, as introduced, Frazier. Public works: prevailing wage rates: wage and penalty assessments.

Existing law requires the Labor Commissioner to issue a civil wage and penalty assessment to a contractor or subcontractor, or both, if the Labor Commissioner determines, after investigation, that the contractor or subcontractor, or both, violated the laws regulating public works contracts, including the payment of prevailing wages. Existing law also requires the awarding body, as defined, to withhold from payments due under a contract for public work an amount sufficient to satisfy the civil wage and penalty assessment issued by the Labor Commissioner, and to give notice of the withholding to the affected contractor or subcontractor.

Existing law permits the affected contractor or subcontractor to obtain review of a civil wage and penalty assessment or a notice of withholding, as specified. Existing law provides that, after 60 days following the service of a civil wage and penalty assessment or notice, the affected contractor, subcontractor, and surety on a bond issued to secure the payment of wages, as provided, become liable for liquidated damages in an amount equal to the amount of unpaid wages, as specified. Existing law provides that there is no liability for liquidated damages if a contractor, subcontractor, or surety deposits the full amount of the

assessment or notice, including penalties, with the Department of Industrial Relations to hold in escrow pending administrative or judicial review.

This bill would make technical, nonsubstantive changes to the latter provisions and delete obsolete provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1742.1 of the Labor Code is amended to
2 read:

3 1742.1. (a) After 60 days following the service of a civil wage
4 and penalty assessment under Section 1741 or a notice of
5 withholding under subdivision (a) of Section 1771.6, the affected
6 contractor, subcontractor, and surety on a bond or bonds issued to
7 secure the payment of wages covered by the assessment or notice
8 shall be liable for liquidated damages in an amount equal to the
9 wages, or portion thereof, that still remain unpaid. If the assessment
10 or notice subsequently is overturned or modified after
11 administrative or judicial review, liquidated damages shall be
12 payable only on the wages found to be due and unpaid.

13 Additionally, if the contractor or subcontractor demonstrates to
14 the satisfaction of the director that he or she had substantial grounds
15 for appealing the assessment or notice with respect to a portion of
16 the unpaid wages covered by the assessment or notice, the director
17 may exercise his or her discretion to waive payment of the
18 liquidated damages with respect to that portion of the unpaid
19 wages. Any liquidated damages shall be distributed to the employee
20 along with the unpaid wages. Section 203.5 shall not apply to
21 claims for prevailing wages under this chapter.

22 (b) Notwithstanding subdivision (a), there shall be no liability
23 for liquidated damages if the full amount of the assessment or
24 notice, including penalties, has been deposited with the Department
25 of Industrial Relations, within 60 days following service of the
26 assessment or notice, for the department to hold in escrow pending
27 administrative and judicial review. The department shall release
28 ~~such~~ *the funds in escrow*, plus any interest earned, at the conclusion
29 of all administrative and judicial review to the persons and entities
30 who are found to be entitled to ~~such~~ *those* funds.

(c) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking administrative review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

~~(d) This section shall become operative on January 1, 2007.~~